

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch**

Mosses Food Mart,

Appellant,

v.

Case Number: C0228643

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Mosses Food Mart (hereinafter “Mosses Food Mart” or “Appellant”) by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Mosses Food Mart.

AUTHORITY

7 U.S.C. 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.

CASE CHRONOLOGY

In a letter dated April 24, 2020, the Retailer Operations Division informed the Appellant that Mosses Food Mart was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

In responses to the Retailer Operations Division of April 27, 2020, April 28, 2020, May 12, 2020, and June 8, 2020, the Appellant, through counsel replied to the charges therein denying the trafficking allegations and claiming that a former employee conducted the SNAP violations without the owner's involvement, knowledge, or consent. The employee was terminated after the manager observed these violations. A police report has been filed and a warrant has been issued for the employee's arrest, both of which are provided as evidence. The employee's confession is provided as evidence as well. All of the Appellant's employees are trained to comply with SNAP regulations. Unfortunately, the Appellant does not have written policies regarding employee training or compliance with SNAP regulations. To ensure that future violations do not occur, proper training and compliance policies are being updated and transcribed into a written manual that will be supplied to each employee. A new policy provision for cataloging and preserving surveillance footage, along with other evidence of notable store incidents or crimes is being added to the written store policy. The owner requests reconsideration of the imposed SNAP disqualification considering personal and professional mitigating factors to include his wife's health complications from the birth of their child in August 2019 and the death of his mother in November 2019.

In the Appellant's response of April 28, 2020, the Appellant, through counsel, requested an extension in time for providing additional information in response to the letter of charges. By letter dated April 28, 2020, the Retailer Operations Division granted the Appellant's time extension request informing the firm that it had until June 8, 2020 to provide all responses to the letter of charges.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a determination letter dated June 10, 2020, informing the Appellant that Mosses Food Mart was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked June 19, 2020, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated June 30, 2020. In an email correspondence of July 21, 2020, the Appellant, through counsel, provided additional information in support of the request for administrative review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 278.6(a) states, inter alia:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system ... [Emphasis added].

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

Trafficking means...The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations ...

7 CFR § 278.6(b)(2) states, inter alia:

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1). [Emphasis added].

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such penalty. [Emphasis added].

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from November 2019 through March 2020. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking.

APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the charge letter, in the administrative review request, and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The owner and store manager dispute the charge of trafficking. However, invoices or other documentation to support this contention are not available at this time. The owner understands the serious and permanent nature of the charge.
- A former employee conducted the SNAP violations without the owner's involvement, knowledge, or consent. The employee was terminated after the manager observed these violations. A police report has been filed and a warrant has been issued for the employee's arrest, both of which are provided as evidence. The employee's confession is provided as evidence as well.
- The owner was never provided a warning of possible violations occurring at Mosses Food Mart. Such a warning would have provided the owner with notice that instances of trafficking were potentially occurring at his store and he could have taken preemptive action so as to avoid permanent disqualification from the snap program.
- All of the Appellant's employees are trained to comply with SNAP regulations. Unfortunately, the Appellant does not have written policies regarding employee training or compliance with SNAP regulations. To ensure that future violations do not occur, proper training and compliance policies are being updated and transcribed into a written manual that will be supplied to each employee. A new policy provision for cataloging and preserving surveillance footage, along with other evidence of notable store incidents or crimes is being added to the written store policy.
- The owner requests reconsideration of the imposed SNAP disqualification considering personal and professional mitigating factors to include his wife's health complications from the birth of their child in August 2019 and the death of his mother in November 2019.

In support of these contentions, the Appellant submitted the following information/documents for review:

- Signed and notarized affidavit of 5 U.S.C. § 552 (b)(6) & (b)(7)(C);
- Police report for Mosses Food Mart dated May 7, 2020;
- Incident Report dated May 21, 2020 (date of incident: February 21, 2020);
- Warrant for Arrest for theft of services for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) dated May 8, 2020;
- Alabama Certificate of Live Birth dated August 24, 2019; and
- Alabama Certificate of Death dated November 13, 2019.

ANALYSIS AND FINDINGS

SNAP Authorization

FNS authorized Mosses Food Mart for participation in the SNAP on November 1, 2019. During the review period of November 2019 through March 2020, Mosses Food Mart was classified as a convenience store. The owner signed a SNAP application for the store on September 19, 2019 and acknowledged he was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The

violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

Store Visit Observations

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 21, 2020 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 5,000 square feet in size with approximately 1,386 square feet of dry storage outside of public view which stocked predominantly drinks and non-food items;
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- One small checkout counter area with limited check-out counter space;
- No optical scanners;
- Had storage coolers/freezers;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- Did not have a special pricing structure such as prices ending in \$x.x9 or \$x.00;
- Transaction totals are not rounded up or down at the checkout counter;
- Telephone orders were taken;
- Delivery was not offered;
- Had some scantily filled shelves and a scantily filled cooler;
- Had empty/unused coolers/freezers;
- Had dusty canned/packaged goods;
- Only three expensive (costing \$5.00 and above) staple food items in stock which were Clover Valley vegetable oil at \$9.99 per 1 gallon (2 units in stock); Conecah sausage at \$5.69 per 16 ounces (3 units in stock); and Aunt Jemima syrup at \$5.09 per 24 ounces (1 unit in stock);
- No fresh or frozen meats, poultry, or seafood;
- Had a kitchen and hot foods were sold;
- No deli and deli meats and cheeses were not sold by the pound;
- Meat items included units of canned fish, eggs, hot dogs, bacon, sausage, packaged lunch meat, meat jerky, and canned/potted meat;
- Dairy included milk, margarine, and cheese;

- Fresh produce stock consisted of a few bananas and apples;
- Other staple foods available for purchase included such items as juice, pasta, rice, cereal, baking mix, loaf bread, corn meal, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods, ice cream, and condiments; and
- Ineligible nonfood items included tobacco products, health and beauty aids, paper products, household cleaning supplies, alcohol, automotive supplies, and jewelry.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

Charge Letter Attachments

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

Stores caught in trafficking violations consistently display particular characteristics or patterns of transactions, including those cited in the letter of charges. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

The Retailer Operations Division presented a case that the Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant store during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Repeat Transactions by the Same Household (Charge Letter Attachment 1)

This charge letter Attachment documents 33 sets of transactions (75 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 21 different SNAP households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

Although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the Appellant's stock and facilities and are therefore, indicative of trafficking.

The report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Mosses Food Mart multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The second, third, and fourth transactions in each set are too large to consist of forgotten items. In addition, there was a small checkout area with one cash register for food purchases and one EBT POS device. There were no shopping carts or hand-held baskets at the time of the store visit available to customers for transporting food within the store. There were no optical scanners or conveyor belts to expedite high dollar or rapid consecutive purchases.

The Appellant firm is located in a rural area. It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are six (6) SNAP authorized retailers, including a large grocery store, located within an 8.25 mile radius of Mosses Food Mart that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Mosses Food Mart and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record indicates that SNAP customers who shopped at Mosses Food Mart during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores or the availability of other food stores does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant contends that a former employee conducted the SNAP violations without the owner's involvement, knowledge, or consent. The employee was terminated after the manager observed these violations. A police report has been filed and a warrant has been issued for the employee's arrest, both of which are provided as evidence. The employee's confession is provided as evidence as well.

These contentions cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. As owner of the store, the Appellant is liable for all violative transactions that occur at Mosses Food Mart. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. Prior to becoming authorized to participate in the SNAP on November 1, 2019, the Appellant completed and submitted a SNAP Application for Retail Stores. The SNAP Application contained a section indicating that the person(s) signing the Application understood and agreed to ensure that store employees follow the SNAP rules and

regulations and that the person(s) accepts responsibility for any SNAP violations that may occur at the store that were committed by any of the store's employees. The SNAP Application also included a section that contained a statement which acknowledged that the person(s) signing the Application was aware that violations of program rules could result in fines, legal sanctions, withdrawal, or disqualification of the store. In addition, the Appellant was provided with program training and reference materials which reinforced the statements included in the SNAP Application.

The owner requests reconsideration of the imposed SNAP disqualification considering personal and professional mitigating factors to include his wife's health complications from the birth of their child in August 2019 and the death of his mother in November 2019.

While FNS is sympathetic to the owner's circumstances, the regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. The Appellant's implied contention that the SNAP violations were committed by a store employee without its knowledge, consent, or approval cannot be accepted as a valid basis for diminishing the penalty. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of USDA.

It is important to note that in the affidavit provided for the store employee, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), she admits to selling ineligible items with SNAP items; however, she claims that she did not traffick SNAP benefits. In addition, the employee states that she was a cashier at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), another authorized SNAP store (FNS# 5 U.S.C. § 552 (b)(6) & (b)(7)(C)) owned by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (Note: 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has also been charged with SNAP trafficking and an administrative review is currently pending). She does not indicate that she was an employee at Mosses Food Mart. In addition, the employee states that she was terminated for her actions on February 21, 2020. The police report, incident report, and warrant for arrest were dated May 2020 which was after the receipt of the April 24, 2020 charge letter. While the owner claims that the employee was responsible for the trafficking of SNAP benefits, there were questionable SNAP transactions occurring in March 2020, after the employee was terminated. These factors call into question the Appellant's claim that the employee was responsible for the trafficking of SNAP benefits.

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in this Attachment were legitimate purchases of eligible foods. The Appellant provided no arguments or evidence to substantiate its claim that trafficking did not occur.

Excessively Large Transactions (Charge Letter Attachment 2)

This charge letter Attachment documents 249 SNAP transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as the Appellant firm to have purchases like those included in Attachment 2 to the charge letter.

The FNS store visit report and photos show that Mosses Food Mart offers a minimal stock of SNAP eligible foods with no fresh or frozen meats, poultry, or seafood, a minimal variety and amount of fresh produce, and a lack of an abundant depth and breadth of staple foods. The firm had some scantily filled shelves and a scantily filled cooler, empty/unused coolers/freezers, and dusty canned/package goods.

The store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts, no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. There is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors. These large transaction amounts are also not consistent with the Appellant store's inventory.

5 U.S.C. § 552 (b)(7)(E).

While the Appellant firm may be located in a neighborhood with households that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

5 U.S.C. § 552 (b)(7)(E).

The store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping.

The USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division analyzes the transaction data and patterns along with other documentation such as, information from the onsite store visit report including photographs of stock and the store layout, an analysis of recipient shopping behavior, and comparisons with similar store types in local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. The regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Based on the discussion above and in the absence of credible evidence for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant’s contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations. As noted herein, the Appellant has the burden of providing credible, relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true. This burden has not been met.

No Warning

The owner contends that he was never provided a warning of possible violations occurring at Mosses Food Mart. Such a warning would have provided the owner with notice that instances of trafficking were potentially occurring at his store and he could have taken preemptive action so as to avoid permanent disqualification from the snap program.

7 CFR § 278.6(d)(2) and (3) of the SNAP regulations provides that “The FNS office making a disqualification or penalty determination ... shall consider ... any prior action ... to warn the firm about the possibility that violations are occurring....” The citation simply requires FNS to consider any prior warnings when determining a sanction. It does not require FNS to give such warnings. FNS did not consider prior actions to warn Mosses Food Mart about the possibility that violations were occurring because there were no prior warnings during the review period. The evidence considered by the Retailer Operations Division included the raw data of questionable transactions and information obtained during the aforementioned store visit conducted on February 21, 2020.

Corrective Action

The Appellant contends that all of the Appellant's employees are trained to comply with SNAP regulations. Unfortunately, the Appellant does not have written policies regarding employee training or compliance with SNAP regulations. To ensure that future violations do not occur, proper training and compliance policies are being updated and transcribed into a written manual that will be supplied to each employee. A new policy provision for cataloging and preserving surveillance footage, along with other evidence of notable store incidents or crimes is being added to the written store policy.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

As previously indicated, the June 10, 2020 determination letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated April 24, 2020 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Mosses Food Mart is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

August 12, 2020